

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**STATE OF TENNESSEE v. CLEO PATTERSON**

**Circuit Court for Montgomery County  
Nos. 25066A, 040663, 040991**

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**No. M2006-01692-CCA-R3-CD - Filed September 28, 2007**

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**ORDER**

On July 16, 2007, this Court granted the State's motion to affirm the trial court's ruling pursuant to Rule 20 of the Tennessee Rules of the Court of Criminal Appeals. The Appellant, Cleo Patterson, filed a petition to rehear, pursuant to Rule 39 of the Tennessee Rules of Appellate Procedure, on July 30, 2007.

The grant or denial of a petition to rehear remains solely in the discretion of this Court. However, Rule 39 of the Tennessee Rules of Appellate Procedure provides guidance to the "character of reasons that will be considered" by the Court in making its determination. Such circumstances include the following: (1) the court's opinion incorrectly states the material facts established by the evidence and set forth in the record; (2) the court's opinion is in conflict with a statute, prior decision, or other principle of law; (3) the court's opinion overlooks or misapprehends a material fact or proposition of law; and (4) the court's opinion relies upon matters of fact or law upon which the parties have not been heard and that are open to reasonable dispute. *See* Tenn. R. App. P. 39(a); *see also* Advisory Comm'n Cmts., Tenn. R. App. P. 39. A petition to rehear is intended to call attention of the Court to matters overlooked, not things which counsel supposes were improperly decided after full consideration. *Clover Bottom Hosp. & Sch. v. Townsend*, 513 S.W.2d 505, 508 (Tenn.1974). Further, a petition for rehearing which merely reargues the appellant's original position will not be granted. *New Jersey Zinc Co. v. Cole*, 532 S.W.2d 246, 253 (Tenn.1975); *State v. Thomas Dillon*, No. 03C01-9304-CR-00124, 1994 WL 615748 (Tenn. Crim. App., at Knoxville, Nov. 7, 1994); *see also* Tenn. R. App. P. 39.

The Appellant brings to our attention one factual discrepancy, and he then proceeds to, essentially re-argue his case. In our memorandum opinion, we stated, "On November 9, 1987, the Petitioner was convicted of robbery with a deadly weapon, aggravated kidnaping, assault with intent to commit first degree murder and grand larceny and received a life sentence plus seventy-five years." The Appellant submitted what he terms the "federal pre-sentencing report," which states the predicate crimes were actually burglary, escape from jail, and sale of cocaine less than .5 grams. We agree that we misstated the crimes of which the Defendant was convicted, however the result of our

opinion remains the same. The predicate convictions occurred in 1988 and 1999. What the Appellant titled as a writ of error coram nobis, the trial court correctly termed a petition for post-conviction relief, for which there is a one-year statute of limitations. This has long since passed as the petition was first filed on April 5, 2006. The Appellant is not entitled to relief. The Petition to Rehear is DENIED, but the original memorandum opinion is withdrawn and an opinion will be filed contemporaneously with this order, *nunc pro tunc*, as a substitute for the original opinion.

PER CURIAM

David H. Welles, Judge

Jerry L. Smith, Judge

Robert W. Wedemeyer, Judge